

### § 668.136

(c) Submit Form G-845 and attachments to the INS District Office.

(Approved by the Office of Management and Budget under control number 1840-0650)

(Authority: 20 U.S.C. 1091, 1094)

[58 FR 3184, Jan. 7, 1993, as amended at 58 FR 26674, May 4, 1993]

### § 668.136 Institutional determinations of eligibility based on INS responses to secondary confirmation requests.

(a) Except as provided in paragraphs (b) and (c) of this section, an institution that has requested secondary confirmation under § 668.133(a) shall make its determination concerning a student's eligibility under § 668.33(a)(2) by relying on the INS response to the Form G-845.

(b) An institution shall make its determination concerning a student's eligibility under § 668.33(a)(2) pending the institution's receipt of an INS response to the institution's Form G-845 request concerning that student, if—

(1) The institution has given the student an opportunity to submit documents to the institution to support the student's claim to be an eligible non-citizen;

(2) The institution possesses sufficient documentation concerning a student's immigration status to make that determination;

(3) At least 15 business days have elapsed from the date that the institution sent the Form G-845 request to the INS;

(4) The institution has no documentation that conflicts with the immigration-status documentation submitted by the student; and

(5) The institution has no reason to believe that the immigration status reported by the applicant is incorrect.

(c) An institution shall establish and use policies and procedures to ensure that, if the institution has disbursed or released title IV, HEA funds to the student in the award year or employed the student under the Federal Work-Study Program, and the institution determines, in reliance on the INS response to the institution's request for secondary confirmation regarding that student, that the student was in fact not an eligible noncitizen during that award year, the institution provides

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the student with notice of the institution's determination, an opportunity to contest the institution's determination, and notice of the institution's final determination.

(Authority: 20 U.S.C. 1091, 1094)

[58 FR 3184, Jan. 7, 1993, as amended at 63 FR 40626, July 29, 1998]

### § 668.137 Deadlines for submitting documentation and the consequences of failure to submit documentation.

(a) A student shall submit before a deadline specified by the institution all documentation the student wishes to have considered to support a claim that the student meets the requirements of § 668.33(a)(2). The deadline, set by the institution, must be not less than 30 days from the date the institution receives the student's output document.

(b) If a student fails to submit the documentation by the deadline established in accordance with paragraph (a) of this section, the institution may not disburse to the student, or certify the student as eligible for, any title IV, HEA program funds for that period of enrollment or award year; employ the student under the Federal Work-Study Program; certify a Federal Stafford or Federal PLUS loan application, or originate a Direct Loan Program loan application for the student for that period of enrollment.

(Authority: 20 U.S.C. 1091, 1094)

[58 FR 3184, Jan. 7, 1993, as amended at 63 FR 40626, July 29, 1998]

### § 668.138 Liability.

(a) A student is liable for any LEAP, FSEOG, Federal Pell Grant, ACG, National SMART Grant, or TEACH Grant payment and for any Federal Stafford, Direct Subsidized, Direct Unsubsidized or Federal Perkins loan made to him or her if the student was ineligible for the Title IV, HEA assistance.

(b) A Federal PLUS or Direct PLUS Loan borrower is liable for any Federal PLUS or Direct PLUS Loan made to him or her on behalf of an ineligible student.

(c) The Secretary does not take any action against an institution with respect to an error in the institution's

determination that a student is an eligible noncitizen if, in making that determination, the institution followed the provisions in this subpart and relied on—

(1) An output document for that student indicating that the INS has confirmed that the student's immigration status meets the eligibility requirements for title IV, HEA assistance;

(2) An INS determination of the student's immigration status and the authenticity of the student's immigration documents provided in response to the institution's request for secondary confirmation; or

(3) Immigration-status documents submitted by the student and the institution did not have reason to believe that the documents did not support the student's claim to be an eligible noncitizen.

(d) Except as provided in paragraph (c) of this section, if an institution makes an error in its determination that a student is an eligible noncitizen, the institution is liable for any title IV, HEA disbursements made to this student during the award year or period of enrollment for which the student applied for title IV, HEA assistance.

(Authority: 20 U.S.C. 1070g, 1091, 1094)

[58 FR 3184, Jan. 7, 1993, as amended at 63 FR 40626, July 29, 1998; 65 FR 38729, June 22, 2000; 71 FR 38003, July 3, 2006; 73 FR 35493, June 23, 2008]

**§ 668.139 Recovery of payments and loan disbursements to ineligible students.**

(a) If an institution makes a payment of a grant or a disbursement of a Federal Perkins loan to an ineligible student for which it is not liable in accordance with § 668.138, it shall assist the Secretary in recovering the funds by—

(1) Making a reasonable effort to contact the student; and

(2) Making a reasonable effort to collect the payment or Federal Perkins loan.

(b) If an institution causes a Federal Stafford, Federal PLUS, Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan to be disbursed to or on behalf of an ineligible student for which it is not liable in accordance with

§ 668.138, it shall assist the Secretary in recovering the funds by notifying the lender in the case of an FFEL Program loan or the Secretary in the case of a Direct Loan Program loan that the student has failed to establish eligibility under the requirements of §§ 668.201 or 685.200, as appropriate.

(c) If an institution is liable for a payment of a grant or Federal Perkins loan to an ineligible student, the institution shall restore the amount equal to the payment or disbursement to the institution's Federal Perkins loan fund or Federal Pell Grant, ACG, National SMART Grant, TEACH Grant, FSEOG, or LEAP amount, even if the institution cannot collect the payment or disbursement from the student.

(d) If an institution is liable for a Federal Stafford, Federal PLUS, Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan disbursement to an ineligible student, the institution shall repay an amount equal to the disbursement to the lender in the case of an FFEL Program loan or the Secretary in the case of a Direct Loan Program loan, and provide written notice to the borrower.

(Authority: 20 U.S.C. 1070g, 1091, 1094)

[58 FR 3184, Jan. 7, 1993, as amended at 63 FR 40626, July 29, 1998; 64 FR 38729, June 22, 2000; 71 FR 38003, July 3, 2006; 73 FR 35493, June 23, 2008]

**Subpart J—Approval of Independently Administered Tests; Specification of Passing Score; Approval of State Procedures**

SOURCE: 75 FR 66960, Oct. 29, 2010, unless otherwise noted.

**§ 668.141 Scope.**

(a) This subpart sets forth the provisions under which a student who has neither a high school diploma nor its recognized equivalent may become eligible to receive title IV, HEA program funds by—

(1) Achieving a passing score, specified by the Secretary, on an independently administered test approved by the Secretary under this subpart; or

(2) Being enrolled in an eligible institution that participates in a State